

United States District Court
for the
Eastern District of New York

Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender
(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: Craig McPherson

Case Number 02-CR-791(S-1)-02

Name of Sentencing Judicial Officer: The Honorable Frederic Block, Sr. United States District Judge

Name of New Judicial Officer: The Honorable Eric N. Vitaliano, United States District Judge

Date of Original Sentence: October 8, 2003

Original Offense: Conspiracy to Distribute and Possess with Intent to Distribute Cocaine Base, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(C), a Class C felony.

Original Sentence: Time Served, followed by three years supervised release. As special conditions of supervised release, the Court ordered the offender to: (1) serve one year home confinement and pay for such confinement via co-payment in an amount to be determined by the Probation Department, based upon the offender's ability to pay and the availability of third-party payments; (2) not possess any kind of firearms; (3) participate in a drug treatment program as directed by the Probation Department; and (4) pay a \$100 special assessment fee.

Modification: On September 14, 2005, the Court modified the conditions of supervised release to include a curfew from 9:00 p.m. until 9a.m. for a one month period in response to the offender's drug use.

Type of Supervision: Supervised Release

Date Supervision Commenced: October 8, 2003

PETITIONING THE COURT

- ☐ To extend the term of supervision for years, for a total term of years.
- ☒ To modify the conditions of supervision as follows:

For a period of 60 days, the defendant shall reside in a Community Confinement Center (CCC) approved by the Probation Department. While in the CCC, the defendant shall adhere to all rules and conditions established by the CCC, including the payment of subsistence costs.

CAUSE

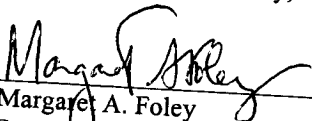
By way of background, the offender, age 43, has a twenty-year history of alcohol use and illegal narcotics abuse. He previously financed his drug use by earnings acquired from selling illegal substances. Prior to commencing supervision, he attended several drug treatment programs. In 1985, he was paralyzed from a gun shot wound and is currently confined to a wheelchair.

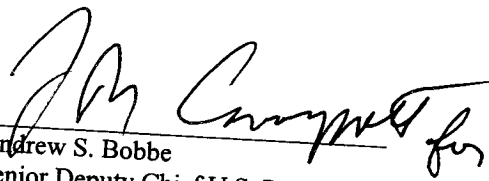
On September 14, 2005, we advised the Court that on May 10, and June 2, 2005, the offender submitted urine specimens to the Probation Department, which confirmed positive for the presence of cocaine. In addition, we reported that he failed to participate in substance abuse treatment due, in part, to problems with his wheelchair. In response to his noncompliance, the Court modified the conditions of supervised release to include a curfew wherein the offender remained at his primary residence from 9:00 p.m. until 9:00 a.m., for a one-month period. Although the offender successfully completed his curfew, he continued to struggle with his attendance and on October 31, 2005, he tested positive for cocaine.

On December 14, 2005, we transferred the offender's treatment from Far Rockaway Treatment Center to our contract vendor, Counseling Services Eastern District of New York, so that we could more effectively monitor his progress. Although his attendance improved, the offender missed individual counseling sessions on February 1, February 8, March 16, March 29, 2006, and group sessions on January 31, February 14, March 22, May 2, , May 23, and May 25, 2006. In addition, on March 28, 2006, the offender submitted a urine specimen, which confirmed positive for cocaine. In response to his noncompliance, we increased the frequency of treatment and on May 9, 2006, he signed a *Waiver to Modify the Conditions of Supervised Release* to include 60 days in a Community Confinement Center (CCC).

Upon the Court's finding that the offender tested positive for illegal controlled substances more than three times over the course of one year, the Court is required to revoke supervised release and impose a term of imprisonment, 18 U.S.C. 3583(g)(1). The Court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants reprieve from mandatory revocation. 18 U.S.C. 3583(d). In this case, the offender has submitted more than three positive urine samples within the last 12 months. Since he desires to remain in outpatient drug treatment, we recommend that he serve 60 days in the CCC as a sanction for his noncompliance. This will permit the offender time to re-commit to sobriety while helping him understand the consequences of his behavior. As such, the Probation Department respectfully recommends that Your Honor modify the conditions as requested.

Respectfully submitted by,

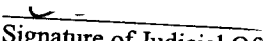

Margaret A. Foley
Senior U.S. Probation Officer
Date: 7/14/06


Andrew S. Bobbe
Senior Deputy Chief U.S. Probation Officer
Date: 7/14/06

THE COURT ORDERS:

- ☐ No Action
☐ The Extension of Supervision as Noted Above
☒ The Modification of Conditions as Noted Above
☐ Other

HON. ERIC N. VITALIANO


Signature of Judicial Officer

JUL 18 2006
Date

NPROB 49
(NYEP-10/28/05)

United States District Court
EASTERN DISTRICT OF NEW YORK

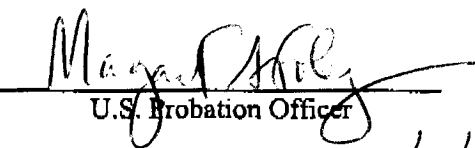
**Waiver of Hearing to Modify Conditions
of Probation/Supervised Release or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and the assistance of counsel before any unfavorable change(s) may be made in my conditions of Probation and/or Supervised Release or before my period of supervision can be extended. By assistance of counsel, "I understand that I have the right to be represented at a hearing by counsel of my choosing if I am able to retain counsel. I also understand that I have the right to request that the Court appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel. "

I hereby voluntarily waive my statutory right to a hearing and to the assistance of counsel. I also hereby agree to the following modification (s) of my conditions of Probation and/or Supervised Release or to the proposed extension of my term of supervision:

For a period of 60 days, the defendant shall reside in a Community Confinement Center (CCC) approved by the Probation Department. While in the CCC, the defendant shall adhere to all rules and conditions established by the CCC, including the payment of subsistence costs.

Witness:


U.S. Probation Officer

Signed:


Probationer or Supervised Releasee5/9/06
Date